



**OFFICE OF  
THE ATTORNEY GENERAL  
AUSTIN, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

June 28, 1947

Honorable W. E. Barron  
District Attorney  
12th Judicial District  
Grimes County  
Navasota, Texas

Opinion No. V-269  
Re: Qualifications of  
Veterans' County  
Service Officer

Dear Sir:

Your request for an opinion is in part as follows:

"I would like an opinion from your Department on the following questions:

"1. Is a person qualified for appointment to the Office of Veterans County Service Officer if he has not had as much as sixty days service in the Armed Forces?

"2. Should you hold that such person is not qualified to fill the office and the length of his service is known to the Commissioners Court, would the payment made to him by the Court be an illegal expenditure of County funds?"

Section 2 of Article 5798a-2 reads:

"Such Veterans County Service Officer and/or Assistant Veterans County Service Officer shall, if so appointed, serve for the remainder of the current county fiscal year during which they are appointed and thereafter shall be appointed for and serve for a term of two years, unless sooner removed for cause by the appointing authority. Such Veterans County Service Officer and such Assistant Veterans County Service Officer shall be qualified by education and training for the duties of such office. They shall be experienced in the law, regulations and rulings of the United States Veterans Administration

controlling cases before them, and shall themselves have served in the active military, naval or other armed forces or nurses corps of the United States during the Spanish American War, World War I, or World War II, for a period of at least four months, and have been honorably discharged from such service. Such persons shall have had at least two year's experience as a Service Officer in a nationally recognized veterans organization engaged in service work to veterans, as defined by the United States Veterans Administration, either as a Post, State, Department, or National Service Officer, which shall be evidenced by a statement of qualifications filed by the individual seeking appointment, with the County Commissioners Court, upon forms supplied by the Veterans State Service Officer of the State of Texas, which shall be certified to by the State Commander of the veterans organization to which such applicant shall belong, or shall have had one year's experience as a County Service Officer or Assistant County Service Officer, or shall have been given a certificate by the Veterans State Service Officer, who is hereby authorized to prescribe the training and qualifications required for the issuance of such certificate. A statement showing that applicant possesses one or more of the above qualifications, accompanied by supporting certificate, shall be filed with the County Commissioners Court at, or before the time said appointments are made, and the filing thereof shall be a condition precedent to such appointment." (Emphasis ours).

This Office in Opinion No. 0-6489 construed this Article to mean that regardless of the other qualifications an applicant for the office of Veterans' County Service Officer may possess, if he has not served in the active military, naval or armed forces during the Spanish-American War, World War I or World War II for a period of at least four months, he would not be eligible for the position of Veterans' County Service Officer or Assistant Veterans' County Service Officer. We are enclosing a copy of this opinion. This answers your first question in the negative.

34 Texas Jurisprudence 618, Sec. 164 reads in part as follows:

"A person may be a de facto officer though he is ineligible to the office in which he functions. . ."

The case of Bell vs. Faulkner, 19 S.W. 480, by the Supreme Court of Texas, held that a clerk of an election who was a minor, under 21 years of age, and not entitled to vote was nonetheless a de facto officer and his ineligibility to hold the office would not render the election void.

In Germany vs. State, 3 S.W. (2) 798, the Court of Criminal Appeals, speaking through Judge Christian, said:

"A person may be a de facto officer though ineligible to such office. Brosch v. Garth et al. (Tex. Civ. App.) 50 S.W. 594; Graves v. M. Griffin O'Neil & Sons (Tex. Civ. App.) 189 S.W. 778."

Next, let us consider the definition of a de facto officer. Mechem on Public Offices and Officers at Page 212, Section 317 reads as follows:

"... Lord Ellenborough defined an officer de facto to be 'one who has the reputation of being the officer he assumes to be and yet is not a good officer in point of law;' and this definition has, in substance, been adopted by the majority of the cases, and the necessity for a color of election has not been affirmed, so far as the rights of third persons are concerned."

Throop on Public Officers, defines a de facto officer on page 586, Section 622 of his work as follows:

"In general, it may be said, that where the question arises, as to the validity of the exercise of a particular power the officer de jure is one who, at the time of such exercise had the right to the office, but was kept out of possession thereof, and who has since established his right; while the officer de facto is the one, who exercised

the power, being then in possession of the office under color authority, but without actual right thereto. And the general rule is, that the exercise of a power by the officer de facto, which lawfully pertained to the office of which he had possession, is valid and binding, where it is for the interest of the public, or of any individual, other than the officer himself, to sustain the officer's act; but where the officer himself founds a right upon such exercise, either personally or officially, it is not valid in his favor."

From the foregoing authorities and definitions the Veterans Service Officer in the instant case is unquestionably a de facto officer. The next question for our consideration is whether payments made to him will constitute an illegal expenditure of county funds.

The general rule laid down in 93 A.L.R. 266 is as follows:

"There is considerable authority to the effect that a de facto officer who, pursuant to apparent authority and in good faith, has performed the duties pertaining to the office, may, in the absence of a de jure claimant, enforce payment by the public of the compensation to which an incumbent of the office is entitled for services performed or duties fulfilled."

This Annotation in A.L.R. cites two Texas cases adhering to this rule and discusses them on page 268 in the following language:

"In *Houston v. Albers* (1903) 32 Tex. Civ. App. 70, 73 S.W. 1084, it was held that a policeman who remained in the service of the city after the term for which he had been appointed expired, without reappointment, and continued to act and be recognized by the city in his official capacity, was, as a de facto officer, entitled to compensation for services rendered the city and accepted by it. . . . When,

however, the city ceased to recognize him as a de facto officer, and refused to permit him to discharge the duties of policemen, it incurred no liability for any salary that he might have earned had he been allowed to continue in the discharge of the duties of his office.' Compare *San Antonio v. Coultrass* (1914; Tex. Civ. App.) 169 S.W. 917, as cited supra, subd. III. And in *Uhr v. Brown* (1916; Tex. Civ. App.) 191 S.W. 379, the court recognized that it had been held that a de facto officer can demand pay for his services where there are no de jure claimants."

It therefore follows that since the Veterans Service Officer is a de facto officer and the county has received the benefits of his endeavors as such, payments heretofore made to him would not be an invalid expenditure of county funds.

Future payments to be made such officer presents another question. A method by which payments may be stopped is by a Quo Warranto proceeding brought against such Service Officer under Article 6253, V.C.S.

The District Attorney of the 12th Judicial District of Texas or the County Attorney of the proper county may therefore file an information in the nature of a Quo Warranto proceeding in the District Court against the said Veterans Service Officer to test his actual right to hold such office, and the County Treasurer may withhold his salary pending the outcome of the proceedings. (Art. 1713 V.C.S.)

Your second question is answered in the negative with suggestion of a proper remedy.

#### SUMMARY

A person is not qualified for appointment as Veterans' County Service Officer by a Commissioners' Court unless he has served in the active military, naval or armed forces during the Spanish-American War, World War I, or World War II, for a period of at least four months, regardless of his other qualifications. (Sec. 2, Art. 5798-a-2, V.C.S., Attorneys General's Opinion No. 0-6489).

Although a Commissioners' Court appoints an ineligible person to the office of Veterans' County Service Officer, if he performs services as such, he is a de facto officer and payments made to him do not constitute an illegal expenditure of county funds. (34 Tex. Jur. 618; 93 A.L.R. 266). The proper method to oust an ineligible person from such office is by Quo Warranto proceedings brought by the District Attorney or County Attorney of the proper county. (Art. 6253 V.C.S.)

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

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RAH/lh

APPROVED:

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